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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re A.T., a Person Coming Under the Juvenile
Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

A.T.,

Defendant and Appellant.

F077531

(Super. Ct. No. 18CEJ600189-1)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. Mary Dolas,
Judge.

Candice L. Christensen, under appointment by the Court of Appeal, for Defendant
and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Michael P. Farrell, Assistant Attorney General, Eric L. Christoffersen and
Christopher J. Rench, Deputy Attorneys General, for Plaintiff and Respondent.

* Before Poochigian, Acting P.J., Meehan, J. and DeSantos, J.

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INTRODUCTION

Appellant A.T. was declared a ward of the court, ordered to serve 30 days in juvenile hall, and placed on probation after the juvenile court found true that he had committed five criminal acts. A.T. contends the record does not demonstrate that the proper procedures were followed to evaluate his eligibility for deferred entry of judgment (DEJ). The People concede the matter should be remanded to the juvenile court. We remand.

FACTUAL AND PROCEDURAL SUMMARY

Because the sole issue on appeal is whether the proper procedures were followed for determining eligibility for DEJ, we dispense with a recitation of the facts of the underlying offenses.

On April 13, 2018, the Fresno County District Attorney filed a juvenile wardship petition pursuant to Welfare and Institutions Code¹ section 602 alleging that A.T. received stolen property (Pen. Code, § 496d); evaded a police officer while operating a motor vehicle in a manner that willfully disregarded public safety (Veh. Code, § 2800.2, subd. (a)); carried a loaded firearm in public (Pen. Code, § 25850, subd. (a)); permitted a loaded firearm to be in a vehicle (Pen. Code, § 26100, subd. (a)); and resisted a police officer in the performance of his or her duties (Pen. Code, § 148, subd. (a)(1)). Simultaneously with the petition, the People filed a JV-750 form indicating that A.T. was eligible for DEJ.

Through counsel, A.T. denied the allegations of the petition. There was a contested adjudication hearing. At the May 21, 2018 dispositional hearing, the juvenile court declared A.T. a ward of the court, ordered him to serve 30 days in juvenile hall, and

¹ References to code sections are to the Welfare and Institutions Code, unless otherwise specified.

placed him on probation. The juvenile court set the maximum period of confinement at four years six months and imposed various terms of probation.

A.T. filed a timely notice of appeal on May 22, 2018.

DISCUSSION

A.T.'s sole contention in this appeal is that the record fails to demonstrate the proper procedures were followed to evaluate his eligibility for DEJ.

I. Deferred Entry of Judgment

A. Standard of Review and Applicable Law

“The DEJ provisions of section 790 et seq. were enacted as part of Proposition 21, The Gang Violence and Juvenile Crime Prevention Act of 1998, in March 2000. The sections provide that in lieu of jurisdictional and dispositional hearings, a minor may admit the allegations contained in a section 602 petition and waive time for the pronouncement of judgment. Entry of judgment is deferred. After the successful completion of a term of probation, on the motion of the prosecution and with a positive recommendation from the probation department, the court is required to dismiss the charges. The arrest upon which judgment was deferred is deemed never to have occurred, and any records of the juvenile court proceeding are sealed. (§§ 791, subd. (a)(3), 793, subd. (c).)” (*Martha C. v. Superior Court* (2003) 108 Cal.App.4th 556, 558.)

In granting or denying DEJ, the court engages in a two-step process, first determining an applicant's eligibility and second, the applicant's suitability for the program. (§ 790, subd. (b).) Under section 790, the prosecuting attorney is required to determine whether the minor is eligible for DEJ. Upon determining that a minor is eligible for DEJ, the prosecuting attorney “shall file a declaration in writing with the court or state for the record the grounds upon which the determination is based, and shall make this information available to the minor and his or her attorney.” (§ 790, subd. (b).) The form designed for this purpose is form JV-750, the completion of which requires the

prosecutor to indicate findings as to the eligibility requirements by checking, or not checking, corresponding boxes. (Cal. Rules of Court,² rule 5.800(b)(1).)

“If a minor is found eligible for DEJ, form JV-751, entitled ‘Citation and Written Notification for Deferred Entry of Judgment—Juvenile,’ is used to notify the minor and his or her parent or guardian. There is a box to check on the form JV-750 indicating that the form JV-751 is attached.” (*In re C.W.* (2012) 208 Cal.App.4th 654, 659 (*C.W.*).) This latter notice informs the minor of the procedures for obtaining DEJ and the need to admit the offense charged in the petition to obtain that relief. (*Id.* at p. 660.)

“While the court retains discretion to deny DEJ to an eligible minor, the duty of the prosecuting attorney to assess the eligibility of the minor for DEJ and furnish notice with the petition is mandatory.” (*In re Luis B.* (2006) 142 Cal.App.4th 1117, 1123.)

“When the juvenile court denies a request for DEJ where the minor is statutorily eligible, we review the decision under the abuse of discretion standard.” (*In re Damian M.* (2010) 185 Cal.App.4th 1, 5.) Judicial discretion is abused only if it results in an arbitrary or capricious disposition, or implies whimsical thinking and “exceeds the bounds of reason, all of the circumstances being considered.” (*People v. Giminez* (1975) 14 Cal.3d 68, 72; see *Scott v. C.R. Bard, Inc.* (2014) 231 Cal.App.4th 763, 783.)

To be eligible for the DEJ program, the juvenile must fall within several criteria. (§ 790.) Section 790, subdivision (a) specifies seven criteria that must be met, including: the juvenile must be at least 14 years of age, cannot have previously been declared a ward of the juvenile court, the offense charged is not one of the offenses enumerated in section 707, subdivision (b), and the offense is not rape, sodomy, oral copulation, or an act of sexual penetration when the victim was prevented from resisting due to being rendered unconscious by any intoxicating or controlled substance. (§ 790, subd. (a)(1)-(7).)

² References to rules are to the California Rules of Court.

However, the juvenile court is not required to conduct a suitability hearing if the prosecutor determines the minor is eligible for DEJ and the minor receives the requisite notice of his or her eligibility, but he or she nevertheless denies the allegations of the petition and requests a contested hearing. (*In re Kenneth J.* (2008) 158 Cal.App.4th 973, 976-980 (*Kenneth J.*); *In re Usef S.* (2008) 160 Cal.App.4th 276, 281-283 (*Usef S.*).) In such circumstances, the minor's denial of the allegations and insistence on a contested hearing are "tantamount to a rejection of DEJ." (*Kenneth J.*, *supra*, at p. 980; see *Usef S.*, *supra*, at p. 286, fn. 3.)

B. Analysis

At the time the original section 602 petition was filed, A.T. was eligible for DEJ and the People filed the requisite JV-750 form with the petition. However, there is no indication in the record that form JV-751 was issued and served on A.T.'s parents. The JV-751 form "must be personally served on the custodial adult at least 24 hours before the time set for the appearance hearing." (Rule 5.800(c).) It is the juvenile court that is charged with issuing the JV-751 form. (*Ibid.*)

The JV-750 form filed by the People did not check the box indicating that the JV-751 form was attached, and no such form appears in the record on appeal. There also is no proof of service attached to the JV-750 form, so there is no evidence that the form was served on A.T. or his parents. There is no other document in the record indicating the JV-751 advisements were provided to A.T. or his parents, as required by rule 5.800(c) and section 791, subdivision (a). The reporter's transcript in the appellate record does not reflect that any discussion of the form JV-751 advisements was had on the record, or that A.T. declined DEJ.

If the required notices had been provided, the juvenile court would not have been required to determine A.T.'s suitability for DEJ because A.T. denied the allegations at a contested jurisdiction hearing. Section 791, subdivision (a)(3) requires that for DEJ, the

minor must admit each allegation of the petition in lieu of jurisdictional and disposition hearings. (*Kenneth J.*, *supra*, 158 Cal.App.4th at pp. 979-980; *Usef S.*, *supra*, 160 Cal.App.4th at p. 286, fn. 3.)

Because the record does not reflect the required JV-751 form was provided to A.T. or his parents; the JV-750 form did not have the box checked stating the JV-751 form was attached; and there is no indication in the reporter's transcript that JV-751 advisements were given or DEJ was discussed, we cannot presume that "official duty has been regularly performed" and error occurred. (Evid. Code, § 664; *In re Trenton D.* (2015) 242 Cal.App.4th 1319, 1326-1327; *C.W.*, *supra*, 208 Cal.App.4th at pp. 660-661.)

The juvenile court in this case "was not excused from the mandatory statutory duty to consider whether" A.T. was suitable for DEJ. (*C.W.*, *supra*, 208 Cal.App.4th at p. 662.) The proper remedy is to set aside the juvenile court's jurisdictional findings and dispositional order and remand the matter for further proceedings under section 790 et sequitur and rule 5.800. (*In re Trenton D.*, *supra*, 242 Cal.App.4th at p. 1327; *C.W.*, *supra*, at pp. 662-663.)

DISPOSITION

We set aside the juvenile court's findings and dispositional order. The matter is remanded for further proceedings in compliance with Welfare and Institutions Code section 790 et sequitur and California Rules of Court, rule 5.800, including notice to the minor, A.T., and his parents or guardians, of his eligibility for deferred entry of judgment, as set forth in Welfare and Institutions Code section 791. If, as a result of those proceedings, the minor elects DEJ, the juvenile court shall exercise its discretion regarding whether or not to grant the minor DEJ. If DEJ is granted, the juvenile court shall issue an order vacating the findings and orders. If the juvenile court denies DEJ, it shall reinstate the jurisdictional and dispositional orders, subject to A.T.'s right to have the denial of DEJ reviewed on appeal. (*In re Trenton D.* (2015) 242 Cal.App.4th 1319, 1327.)